IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.2122 of 2002
& WAMP No.3591 of 2002

1.The Regional Joint Director,
Animal Husbandry,
Thadagam Road, R.S.Puram
Coimbatore-2.

2.The Assistant Director,
Animal Husbandry and Animal
Disease, Intelligence Unit,
Veternary Hospital Campus,
Coimbatore-1.

3.The Accommodation Controller,
(Revenue Divisional Officer),
State Bank Road,
Coimbatore-18. ... Appellants/Respondents.

Vs.

D.Nachiappan .. Respondent/Petitioner.

Writ appeal filed under Clause 15 of the Letters Patent Act against the order of Single Judge of this Court dated 25.06.2001 made in W.P.No.6831 of 1995.

W.P.No.6831 of 1995: Petition filed under Article 226 of the Constitution of India, to issue Writ of Mandamus directing the first and second respondent to pay the petitioner the gratuity amount [retirement benefit] due to him.

For Appellants : Mr.K.Elango
Special Government Pleader

For respondent : Ms.P.T.Asha

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 25.06.2001 made in W.P.No.6831 of 1995, in and by which, the learned single Judge, after finding that the writ petitioner was not aware of the pendency of the proceedings of the fixation of fair rent and hence, he would not be liable to pay of enhanced rent, has allowed the writ petition.

2. Heard the learned Special Government Pleader for appellants as well as the learned counsel for the respondent.

3. It is not in dispute that when the petitioner was transferred to Coimbatore Veterinary Hospital Campus as Veterinary Assistant Surgeon in the year 1977, he was allotted a house bearing door No.12, B.M.S. Colony, 11th Street, Coimbatore-12, on a monthly rent of Rs.100/- in September, 1979 by the Accommodation Controller, Coimbatore-12. He had been regular in payment of rents and there was no default on his part. It seems, according to him, the house owner filed a petition before the Rent Controller against the Accommodation Controller and the then allottee, one Mohammed Moideen, for fixation of fair rent from Rs.100/- to 600/- for the said premises. The petitioner was not informed about the pendency of the case in respect of the premises when he was allotted the same. He was not impleaded in the rent control proceedings. He was kept in dark. Only in the year 1993, he came to know that the house owner had filed a petition before the Court for the release of his building from the Accommodation Controller. Further, considering his salary, he was not entitled to get an accommodation of a house of monthly rent of Rs.600/-. Therefore, the Accommodation Controller has no right to demand Rs.86,000/- from the petitioner towards the enhanced rent at the rate of Rs.600/- per month. He opted for voluntary retirement and in fact, he was retired on 05.04.1994 and vacated the premises in the month of August, 1994. Though the second respondent paid his Provident Fund amount on 06.03.1995, his gratuity amount was not paid to him. It is further stated that all the pensionary benefits are fully exempted from attachment. Accordingly, respondents 1 and 2 are not entitled to attach any amount from the gratuity amount towards the illegal claim of the third respondent.

4. The learned single Judge, accepting the stand of the petitioner, particularly, considering that he had no knowledge about the rent control proceedings, has allowed the writ petition and issued a mandamus, as prayed for. The learned Special Government Pleader appearing for the appellant, by drawing our attention to the copy of the lease agreement, which is available at pages 5 to 10 of the typed set of papers, has contended that in view of Clause 2(iii) of the lease agreement, the writ petitioner is liable to pay the enhanced rent, as ordered by the Court. He further contended that in view of the fact that the petitioner being a party to the said lease agreement, he cannot deny the same.

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The said clause reads as follows:

> "2(iii) I agree to bear all the legal and other incidental expenses that may be incurred by the State Government and costs which may be awarded by the Court, in all cases arising in respect of the above premises allotted to me. If I default in payment of such expenses and costs, I agree that the Government may deduct from my salary or from my death-cum-retirement gratuity, the legal and other incidental expenses and costs awarded by the Court in the cases arising in respect of the premises."

5. The above Clause makes it clear that the petitioner has agreed to abide by the order or award of the Court in respect of the above premises allotted to him.

6. Apart from the above factual position, the learned Special Government Pleader has brought to our notice that the petitioner was duly intimated by the Revenue Divisional Officer, Coimbatore, by his letter dated 15.11.1991 about the pendency of the Rent Control proceedings filed by the owner of the premises seeking enhanced rent. The relevant portion of the said letter reads as under:

> 'பார்வையில் கண்ட வழக்கு ஒதுக்கீடு வீட்டிற்கு வாடகை உயர்த்தி கேட்டல் தொடர்பாக விசாரணை 26.11.91 தேதியில் நடைபெற உள்ளது.
>
> எனவே தாங்கள் 25.11.91 தேதியன்று அரசு வழக்கறிஞரை நேரில் சந்தித்து வழக்கிற்கு தேவையான விபரங்கள் பெற்று, பின்ப, 26.11.91 நீதிமன்றத்தில் ஆஜராகும்படி கேட்டுக் கொள்கிறேன். மேற்காணும் தேதிகளில் ஆஜராகவில்லையானால் நீதிமன்றம் ஒருதலை பட்சமாக தீர்ப்ப, வழங்க ஏதுவாகும் என்பதையும் தெரிவித்துக் கொள்கிறேன்.'

7. In addition to the above factual details, the learned Special Government Pleader relied on the Government order viz., G.O.Ms.No.383, Home Department dated 13.02.1980. Among the various clauses para 1 of the said Government order, which is relevant reads as follows:

> "Buildings taken over under Section 3(3) of the Act are being allotted to the eligible Government Servants according to the order of priority, subject to execution an agreement agreeing to pay rent at the rate fixed by the Accommodation Controller or fair rent fixed by Rent Controllers regularly and in default recover from pay and pension."

8. All the above particulars clearly show that as per the lease agreement, the petitioner while occupying the premises at the relevant time, agreed to pay the contractual rent as well as the amount determined by the Court. The letter of the Revenue Divisional Officer, Coimbatore, dated 15.11.1991 makes it clear that the petitioner was put on notice about the rent control proceedings and in fact, he was requested to furnish necessary details to the Government Pleader, who was defending the

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Accommodation Controller in the said proceedings. The Government order referred to above also makes it clear that the allottee (petitioner herein) is bound to pay at the rate fixed by the Accommodation Controller or fair rent fixed by the Rent Controller regularly and in default, the amount is liable to be recovered from his pay and pension.

9. All the above mentioned factual details have not been adverted to by the learned single Judge. On the other hand, the learned single Judge has committed an error in holding that the petitioner had no knowledge about the same. In the light of the factual details mentioned above, we are unable to accept the conclusion arrived at by the learned single Judge. On the other hand, we are in agreement with the stand taken by the appellants. In these circumstances, the order of the learned single Judge dated 25.06.2001 is set aside and the writ appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

raa

To

1.The Regional Joint Director,
Animal Husbandry,
Thadagam Road, R.S.Puram
Coimbatore-2.

2.The Assistant Director,
Animal Husbandry and Animal
Disease, Intelligence Unit,
Veternary Hospital Campus,
Coimbatore-1.

3.The Accommodation Controller,
(Revenue Divisional Officer),
State Bank Road,
Coimbatore-18.

+ 1 CC To M/s.Sarvabhauman Associates, SR NO. 63333

+ 1 CC to the Government Pleader SR NO 63439

W.A.No.2122 of 2002

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